

**PURCHASE AND SALE AGREEMENT**

**between**

**The Borough of Merchantville,  
a municipal corporation of the State of New Jersey**

**and**

**Citadel Wellwood, LLC**

**WEST MAPLE AVENUE REDEVELOPMENT ZONE**

## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT**, as of the \_\_\_\_ day of September, 2011 between the **Borough of Merchantville**, a municipal corporation of the State of New Jersey (“Borough”), whose address is 1 West Maple Avenue, Merchantville, New Jersey 08109, and **Citadel Wellwood, LLC**, a New Jersey limited liability company (“Citadel Wellwood”), whose address is 201 Union Lane, Brielle, New Jersey 08730.

### **RECITALS:**

**WHEREAS**, Borough intends to become, pursuant to the terms of a Redeveloper Agreement, defined herein, the owner of certain real and personal property and improvements, as more particularly described below:

**WHEREAS**, Borough desires to sell to Citadel Wellwood and Citadel Wellwood desires to purchase from Borough such real and personal property and improvements, as more particularly described below, on the terms and conditions hereinafter set forth;

**WHEREAS**, Borough and Citadel Wellwood have agreed that Citadel Wellwood will be the redeveloper designated to undertake the historic restoration of the multi-family building (606 West Maple Avenue) located on Block 9, Lots 2 and 3 and the development of parking areas at the rear of Block 9, Lot 4. The Redeveloper shall have the right but not the obligation to acquire all of the property;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

### **ARTICLE I - GENERAL INFORMATION**

The following general information is used throughout this Agreement:

- |            |  |   |
|------------|--|---|
| <b>1.1</b> | <b><u>Citadel Wellwood:</u></b>        | Citadel Wellwood, LLC, a New Jersey limited liability company   |
| <b>1.2</b> | <b><u>Citadel Wellwood Tax ID:</u></b> | 27-5018183  |
| <b>1.3</b> | <b><u>Land:</u></b>                    | That certain real property identified as Block 9, Lots 2, 3 and 4, and more particularly described in Exhibit “A” attached hereto and made a part hereof. |
| <b>1.4</b> | <b><u>Purchase Price:</u></b>          | The sum of One Dollar (\$1.00), plus any amounts due under Section 4.3 herein.  |
| <b>1.5</b> | <b><u>Intentionally omitted.</u></b>   |   |

- 1.6     Closing Date:**                                 Within 10 days of the entry of a final and unappealable judgment by the Superior Court of New Jersey that the Borough was duly authorized to acquire title to the property or properties through an eminent domain action.
- 1.7     Place of Closing:**                             At the office of the Seller:  
1 West Maple Avenue  
Merchantville, New Jersey 08109
- 1.8     Notices, Borough:**                           Borough of Merchantville  
Attn: Denise Brouse, Borough Clerk  
1 West Maple Avenue  
Merchantville, New Jersey 08109  
Fax: (856) 662-0461
- with a copy to:   Timothy J. Higgins, Esquire  
Law Offices of Timothy J. Higgins  
1040 North Kings Highway - Suite 300  
Cherry Hill, New Jersey 08034  
Fax #(856) 414-9112
- 1.9     Notices, Citadel Wellwood:**               Richard DePetro  
Citadel Wellwood, LLC  
201 Union Lane  
Brielle, New Jersey 08730
- with a copy to:   Paul V. Fernicola, Esq.  
Paul V. Fernicola & Associates, LLC  
219 Broad Street  
Red Bank, New Jersey 07701

## **ARTICLE II - DEFINITIONS**

The terms defined in Article I and this Article II, whenever capitalized, shall have the meanings set forth below and in Article I, whenever such terms are used in this Agreement and all Exhibits hereto, unless the context clearly indicates a different meaning:

**2.1     “Agreement”** This instrument, together with all exhibits, addenda, schedules, and proper amendments thereto.

**2.2     “Closing”** The consummation of the transactions contemplated by this Agreement, including the transfer of all or a portion of the Property to Citadel Wellwood and receipt of the Purchase Price by Borough.

**2.3 “Contingency Date”** The date occurring ninety (90) days after the Effective Date, within which time Citadel Wellwood is entitled to conduct its environmental audit pursuant to Section 5.3 and its other due diligence inspections pursuant to Section 5.4 of this Agreement.

**2.4 “Deed”** The Bargain and Sale Deed with Covenants Against Grantor’s Acts, to be delivered to Citadel Wellwood at Closing in the form attached hereto as Exhibit “B” and made a part hereof.

**2.5 “Redeveloper Agreement”** Agreement defining redevelopment obligations and rights of the Borough and Citadel Wellwood.

**2.6 “Due Diligence Period”** The period of time extending ninety (90) days from the Effective Date, within which time Citadel Wellwood is to conduct its due diligence inspection of the Property pursuant to Sections 5.3 and 5.4 of this Agreement.

**2.7 Intentionally omitted.**

**2.8 “Effective Date”** The date upon which this Agreement is fully executed.

**2.9 Intentionally omitted.**

**2.10 “Hazardous Materials”**. Shall have the meaning set forth in Section 7.2 hereof.

**2.11 “Property”**. Collectively, the items of real and personal property and improvements to be conveyed to Citadel Wellwood pursuant to this Agreement as set forth in Article III hereof.

**2.12 “Purchase Price”**. The sum specified in Article I above, payable in the manner set forth in Article IV hereof.

### **ARTICLE III - AGREEMENT OF PURCHASE AND SALE**

**3.1 Property.** Subject to the terms and conditions set forth in this Agreement *and Redeveloper’s Agreement entered into by and between the Parties*, Borough agrees to sell, transfer and assign to Citadel Wellwood, and Citadel Wellwood agrees to purchase and accept from Borough, all of Borough’s right, title and interest in and to the following described property or the properties specially requested by the Redeveloper (herein collectively called the “Property”):

(a) Land. The Land.

(b) Easements. All easements, if any, benefiting the Land or the Improvements (as hereinafter defined).

(c) Rights and Appurtenances. All rights and appurtenances, if any, pertaining to the Land including any right, title and interest of Borough in and to adjacent streets, alleys or rights-of-way.

(d) Improvements. All improvements to and structures in and on the Land (“Improvements”).

(e) Tangible Personal Property. All appliances, fixtures, equipment, machinery, furniture, carpet, drapes and other personal property, if any, located on or about the Land and the Improvements or used exclusively in the operation and maintenance thereof (“Tangible Personal Property”). Borough represents that to the best of Borough’s knowledge, no Tangible Personal Property located on the Premises is owned by any person or entity other than Borough.

(f) Intangible Property. All intangible property (“Intangible Property”), if any, pertaining to the Land, the Improvements, or the Tangible Personal Property or the use thereof, including, without limitation, transferable contracts, transferable telephone exchange numbers, plans and specifications, engineering plans and studies, floor plans and landscape plans, trademarks or trade names or any other similar property or rights.

#### **ARTICLE IV - CONSIDERATION**

##### **4.1 Intentionally omitted.**

**4.2 Promise of Redevelopment.** To induce the parties’ mutual performance under this Agreement, Borough has agreed to designate Citadel Wellwood, L.L.C. as the redeveloper and Citadel Wellwood, L.L.C has agreed to undertake the necessary construction to rehabilitate the Property, as more particularly described above. The terms of the Redeveloper’s Agreement, dated September \_\_\_\_\_, 2011, by and between the Borough of Merchantville and Citadel Wellwood, which is to be executed at or before the Closing of this Agreement, will be deemed to be incorporated into this Purchase and Sale Agreement by reference as if set forth at length herein. The Buyer herein specifically acknowledges additional compensation which may be due the Borough under the terms of the Redeveloper’s Agreement as consideration for the sale of the within Property. THE PROVISIONS OF THIS SECTION 4.2 SHALL SURVIVE CLOSING.

**4.3 Purchase Price.** The Borough shall convey to the Redeveloper a fee simple interest in any property specifically requested by the Redeveloper comprising the West Maple Avenue Project Area, which the Redeveloper does not already own, along with the existing improvements located on all such properties, for an aggregate amount equal to the “Project Costs” defined in Section 2. of the Redeveloper’s Agreement executed by and between the parties herein, which are as follows:

a the final, unappealable, award or price paid or to be paid to the property owner(s) of each parcel making up the West Maple Avenue Project Area not already owned by the Redeveloper, which shall be the just compensation value determined by the condemnation process either in bona fide negotiations with the said property owner(s) or as a result of the proceedings before the condemnation commissioners or the court;

b. costs associated with the investigation and remediation of all environmental conditions in the West Maple Avenue Project Area necessary for the redevelopment and approval of all applicable regulatory agencies;

c. costs and fees incurred in complying with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. ("redevelopment Law") and the Eminent Domain Law, N.J.S.A. 20:30-1 et. seq. ("Eminent Domain Law") including, but not limited to, professional services, expert fees, inspections, appraisals, environmental investigations, the costs associated with the relocation of existing tenants under the N.J.S.A. 20:4-1 ("Relocation Assistance Act"), court deposits and court costs and fees associated with bona-fide negotiations, commissioner hearings, court proceedings and challenges to property acquisition; excluding any costs incurred by the Borough in designating the area as an Area in Need of Redevelopment; and

d. any and all other outstanding costs and expenses incurred by the Borough relative to the property located at 606 West Maple Avenue, specifically any and all fines, relocation expenses, municipal liens and other outstanding fines and/or costs incurred by the Borough, determined to be the sum of \$60,000.00, during the time period in said property was owned and/or controlled by Shaukat Malik personally and/or Malik and Son, LLC, which shall also include, but not be limited to, all fees and costs of professional legal, technical or financial consultant, contractor or vendor costs. Upon payment of these costs and expenses by the redeveloper, the Borough specifically grants to the Redeveloper any and all rights which the Borough would have against Shaukat Malik personally and/or Malik and Son, LLC, for the recoupment of these costs and expenses incurred by the Borough relative to the property located at 606 West Maple Avenue. This amount is non-refundable and shall be paid to the Borough upon execution of this document and the Redeveloper's Agreement; and

e. any other reasonable and appropriate out-of-pocket expenses which are associated with the Redevelopment Project, which shall include, but not be limited to all fees and costs of professional, legal, technical or financial consultant, contractor or vendor necessary for the Project.

**4.4 Completion of Redevelopment Project.** The parties mutually agree that the Project referenced in the Redeveloper's Agreement dated September \_\_\_\_, 2011 shall be completed within one (1) year of the closing of title to the Property as per Section 6.1 of this Agreement and final and unappealable site plan approval. Any extension to this completion date shall be in writing and as executed by the parties hereto. Failure to complete the redevelopment project as per the specifications in the Redeveloper's Agreement shall constitute a default pursuant to Article XI. of this Agreement.

## **ARTICLE V - CONDITIONS TO CLOSING**

**5.1 General Conditions.** Borough's obligation to sell all or a portion of the Property to Citadel Wellwood and Citadel Wellwood's obligation to purchase the Property from Borough, at the Closing, are subject to and conditioned upon (i) the other party not being in default under this Agreement or the Redeveloper Agreement; and (ii) the delivery by the appropriate party of the items set forth in Section 9.2 on the Closing Date, or the waiver of such conditions in accordance with the terms of this Agreement.

**5.2 Environmental Audit Contingency.** From the Effective Date through the Contingency Date, Citadel Wellwood may conduct, at its sole cost and expense and subject to the limitations set forth in Section 5.3 below, an environmental audit of the Property to determine that same is in all respects reasonably satisfactory to Citadel Wellwood. For the purposes of this section,

the term “environmental audit” means the testing, sampling or investigation of the present and past uses of the Property to determine if there is an environmental defect and such other tests and investigations as deemed necessary by Citadel Wellwood. The term “environmental defect” means the presence on or within the Property or on or below the surface thereof or evidence of the presence on or within the Property or on or below the surface thereof of any hazardous substances at concentrations or levels in excess of the non-residential remediation standards utilized by NJDEP in the implementation of industrial site recovery programs. Prior to the Contingency Date (defined as ninety (90) days from the Effective Date of the Agreement), if Citadel Wellwood determines that there is an environmental defect or if the results of the environmental audit are unsatisfactory to Citadel Wellwood, in Citadel Wellwood’ sole discretion, then Citadel Wellwood shall have the right to terminate this Agreement by written notice to the Borough delivered on or before the Contingency Date, and thereafter neither party shall have any further liability hereunder.

**5.3 Due Diligence Contingency by Citadel Wellwood.** Citadel Wellwood may conduct, at its own cost and expense, a due diligence inspection of the Property including, without limitation: (a) a survey; (b) surface, subsurface and topographic conditions of the Property; (c) the presence on the Property of hazardous substances; (d) the presence of asbestos or asbestos-containing materials on the Property; (e) a review of financial and other records related to the Property; (f) applicable laws, regulations and ordinances; and (g) such other inspections as Citadel Wellwood in its sole discretion deems necessary or desirable to determine whether Citadel Wellwood will purchase the Property in its current “AS IS” condition. Except as otherwise provided herein, Borough makes no representation or warranty regarding the exact size of the land or the square footage of the improvements located thereon. As part of such due diligence, Citadel Wellwood may conduct a non-invasive environmental audit of the Property for which purpose Borough shall allow Citadel Wellwood and Citadel Wellwood’ agent reasonable access. Citadel Wellwood shall not conduct or allow any physically intrusive testing of, on or under the Property without prior written approval by Borough. Citadel Wellwood inspection of the Property may include sampling, provided: (a) Citadel Wellwood provides Borough with a sampling plan before engaging in any sampling; (b) Borough approves the sampling plan, which approval shall not be unreasonably withheld or delayed; (c) Citadel Wellwood agrees to divide samples with Borough and to conduct sampling only in the presence of a representative of Borough; (d) Citadel Wellwood shall promptly provide Borough with the results of all investigations including, without limitation, all copies of reports, studies, surveys, plans and other documentation resulting from its inspection prepared by or for Citadel Wellwood (collectively, the “Reports”); (e) Citadel Wellwood agrees to allow Borough to consult with Citadel Wellwood and Citadel Wellwood’ consultants and/or other experts with respect to addressing Borough’s comments regarding proposed sampling and the preparation of or finalization of Reports; and (f) Citadel Wellwood agrees to promptly restore the Property and correct any damage caused as a result of any such sampling. In the event Citadel Wellwood’ inspections reveal the existence of any environmental condition which may impose an obligation to report such conditions to any federal, state or local agency, Citadel Wellwood agrees that neither Citadel Wellwood nor any of Citadel Wellwood’ consultants or experts shall make such a report (unless failure to do so would subject Citadel Wellwood to liability) to any such agencies without Borough’s written consent, which consent may be granted or withheld in Borough’s sole discretion. Citadel Wellwood, or Citadel Wellwood’ agent, shall maintain at all times during the Due Diligence Period (as herein defined), general liability insurance in an amount not less than \$1,000,000.00, name the Borough as an additional insured and, upon request of Borough, will provide Borough with written evidence of same. Citadel Wellwood shall be responsible for any damage caused as a result of its inspection. This obligation shall survive termination of this Agreement and the Closing.

Citadel Wellwood and the Borough agree that, in making any inspections of, or conducting any testing of, on or under the Property, neither party nor their agents will reveal to any third party not approved by the other party (except for either the Borough's or Citadel Wellwood' counsel, other advisors and any prospective mortgagee) the results of Citadel Wellwood' inspections and tests, unless ordered by a court of competent jurisdiction, by subpoena or unless failure to do so would subject Citadel Wellwood or the Borough to liability, or, in the case of the Borough, if the failure to disclose such information would violate any public right to know law. Citadel Wellwood agrees to restore promptly any physical damage caused by the inspections or tests. Citadel Wellwood shall give Borough reasonable prior written notice of its intention to conduct any inspections or tests and Borough reserves the right to have a representative present. Citadel Wellwood agrees to provide Borough with a copy of any inspection or test report. Citadel Wellwood agrees (which agreement shall survive closing or earlier termination of this Agreement) to indemnify, defend and hold Borough free and harmless from any loss, injury, damage, claim, lien, cost or expense, including attorneys' fees and costs, arising out of a breach of the foregoing agreements by Citadel Wellwood or any claim or injury arising in connection with Citadel Wellwood' inspection and testing of the Property. Any inspections and testing shall be at Citadel Wellwood' sole cost and expense.

If Citadel Wellwood, in its sole discretion, is not satisfied with the results of its inspection of the Property or records, then in such event Citadel Wellwood shall have the "Due Diligence Period" within which to elect to terminate this Agreement by giving notice of such election, which notice shall set forth the basis upon which Citadel Wellwood has elected to terminate this Agreement on or before 5:00 p.m. local time on the Contingency Date. The results of all inspections including, but not limited to environmental inspections, shall be deemed confidential in nature and, except as provided above, shall not be disclosed to any third parties by Citadel Wellwood or the Borough without the other party's express written authorization. In the event of such termination, this Agreement shall be without any further force, effect or obligation of either party to the other, except for those provisions that expressly survive the termination of this Agreement. If Citadel Wellwood has not delivered a notice of termination within the required time period in accordance with this section, then Citadel Wellwood shall have no further right to terminate this Agreement pursuant to this section, and this Agreement shall continue in full force and effect unless due to a material adverse change in condition or circumstances from those existing during the Due Diligence Period.

**5.4 Redeveloper Agreement Contingency.** The parties' obligation to proceed to Closing is contingent upon the execution of and terms and conditions of a Restated Redeveloper Agreement between the Borough and Citadel Wellwood, or its assigns, at or before the Closing date. Any conflict between the terms of this Agreement and the Redeveloper Agreement shall be governed by the terms of the Redeveloper Agreement.

**5.5 Off-Site Improvements Contingency.** The parties' obligation to proceed to Closing is contingent upon the Borough and Citadel Wellwood, or its assigns, reaching written agreement, satisfactory to both parties, of a Redeveloper's Agreement, setting forth obligations and rights as to the completion of certain off-site improvements by the Borough at or before the Closing Date. At this time, the parties did not contemplate any off-site improvements necessary for the implementation of the Redevelopment Plan.

**5.6 No Other Contingencies.** Except as explicitly provided in this Agreement and the Redeveloper's Agreement, there are no contingencies to Citadel Wellwood' and Borough's respective performance obligations under this Agreement.



## **ARTICLE VI - TITLE**

**6.1** At closing, Borough shall convey title to the Property free and clear of all rights and claims of others including any tenants in possession, except that Citadel Wellwood agrees to take title subject to those title exceptions set forth on the schedule attached hereto as Exhibit "C" and made a part hereof.

## **ARTICLE VII - NO REPRESENTATIONS OR WARRANTIES BY BOROUGH**

**7.1 Disclaimer.** CITADEL WELLWOOD ACKNOWLEDGES AND AGREES THAT BOROUGH HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY; (B) THE WATER, SOIL AND GEOLOGY OF THE PROPERTY, (C) THE INCOME TO BE DERIVED FROM THE PROPERTY, (D) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH CITADEL WELLWOOD MAY CONDUCT THEREON, (E) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (F) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (G) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (H) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, EXCEPT FOR THOSE REPRESENTATIONS MADE BY BOROUGH IN SECTIONS 6.2 AND 8.2 OF THIS AGREEMENT. BOROUGH HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PROPERTY OF HAZARDOUS MATERIALS. CITADEL WELLWOOD FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, CITADEL WELLWOOD IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY BOROUGH. CITADEL WELLWOOD FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT BOROUGH HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. BOROUGH IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. CITADEL WELLWOOD AGREES, AT THE CLOSING, TO ACCEPT THE PROPERTY AND WAIVE ALL OBJECTIONS OR CLAIMS AGAINST BOROUGH (INCLUDING, BUT NOT LIMITED TO,

ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE PROPERTY OR TO ANY HAZARDOUS MATERIALS ON THE PROPERTY. CITADEL WELLWOOD FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS", "WHERE IS" CONDITION AND BASIS "WITH ALL FAULTS". IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY BOROUGH AND PURCHASED BY CITADEL WELLWOOD SUBJECT TO THE FOREGOING. THE PROVISIONS OF THIS SECTION 7.1 SHALL SURVIVE THE CLOSING.

**7.2 Hazardous Materials.** "Hazardous Materials" shall mean any substance which is or contains (i) any "hazardous substance" as now or hereafter defined in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.) ("CERCLA") or any regulations promulgated under CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) ("RCRA") or regulations promulgated under RCRA; (iii) any substance regulated by the Industrial Site Recovery Act (N.J.S.A. 13:1K-6, et seq.) ("ISRA"), or any regulations promulgated under ISRA, the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11, et seq.) (the "Spill Act"), or any regulations promulgated under the Spill Act, the Solid Waste Management Act (N.J.S.A. 13:1E-1, et seq.), or any regulations promulgated under the Solid Waste Management Act; (iv) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); (v) gasoline, diesel fuel, or other petroleum hydrocarbons; (vi) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vii) polychlorinated biphenyls; (viii) radon gas; and (ix) any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under any environmental law, ordinance, rule or regulation, now or hereinafter enacted, or the common law, or any other applicable laws relating to the Land and Improvements.

**7.3 Indemnification.** Citadel Wellwood hereby agrees to indemnify and hold harmless Borough from and against any and all loss, costs or damages (including reasonable attorneys' fees) with respect to the breach of any warranty or representation of Citadel Wellwood herein, or the breach of any of the provisions of this Agreement which survives the Closing, or the existence, use, ownership, occupancy, operation and/or maintenance of the Property following the Closing Date, including without limitations: (a) any obligation including a payment obligation or damages arising out of Citadel Wellwood' failure to comply for any period following the Closing Date with respect to Citadel Wellwood' obligations under any contracts or agreements in writing, entered into by Citadel Wellwood or on behalf of Citadel Wellwood with respect to the existence, use, ownership, occupancy, operation and/or maintenance of the Property or any portion thereof; (b) any obligation pertaining to taxes, levies, charges, liens or assessments arising after the Closing Date or assumed hereunder;; and (c) the presence, release, discharge or contamination (irrespective of when occurring) of or by the Property of any Hazardous Materials except if such presence, release, discharge or contamination is caused by the Borough, its employees or agents. Citadel Wellwood further agrees, upon notice from Borough, to contest any demand, claim, suit or action against which Citadel Wellwood has herein agreed to indemnify and hold Borough harmless and to bear all reasonable costs and expenses of such contest and defense, including reasonable attorneys' fees. Citadel Wellwood' obligations under this Section shall survive the Closing.

## **ARTICLE VIII - FUTURE OPERATIONS**

**8.1 Maintenance, Litigation.** From the date of this Agreement as set forth on page one of this Agreement until the Closing or earlier termination of this Agreement, Borough will (i) keep and maintain the Land and Improvements in their condition as of the date of this Agreement, reasonable wear and tear and casualty excepted, and (ii) promptly advise Citadel Wellwood of any litigation, arbitration or administrative hearing concerning the Property, arising or threatened, of which Borough has notice.

**8.2 Zoning.** Borough represents that Citadel Wellwood' intended use of the Property is not in violation of any zoning ordinances.

## **ARTICLE IX - CLOSING**

**9.1 Date and Place of Closing.** Subject to the satisfaction or waiver of all conditions to either party's obligation to consummate the purchase and sale of the Property, the Closing shall take place on the Closing Date at the Place of Closing specified in Article I above.

**9.2 Items to be Delivered at Closing.**

(a) By Borough. At or prior to Closing, Borough shall deliver or cause to be delivered to Citadel Wellwood, through escrow or directly to Citadel Wellwood, each of the following items:

- (i) The Deed, suitable for recording, conveying title to the Property to Citadel Wellwood, subject to the exceptions set forth in Section 6.1.
- (ii) Evidence of Borough's authority to consummate this transaction;
- (iii) Any reasonable and customary certificates and affidavits that may be required in the normal course for Borough to convey title pursuant to Section 6.1, in form and substance satisfactory to Citadel Wellwood's title insurer, duly executed by Borough;
- (iv) Possession of the Land and Improvements, subject to the exceptions to title set forth in Section 6.1.

(b) By Citadel Wellwood. At or prior to Closing, Citadel Wellwood shall deliver to Borough, or cause to be delivered to Borough, through escrow or directly to Borough, each of the following items:

- (i) The balance of the Purchase Price in cash, certified check or cashier's check;
- (ii) Evidence of Citadel Wellwood' authority to consummate this transaction; and

**9.3 Certificate of Occupancy.** A certificate of occupancy or housing code letter or similar approval regarding the Property is not required before title to the Property can be transferred from Borough to Citadel Wellwood.

## **ARTICLE X - CLOSING COSTS AND ADJUSTMENTS**

**10.1 Closing Costs.** Borough and Citadel Wellwood shall each pay their respective attorneys' fees (except as provided in Section 12.11 of this Agreement). Citadel Wellwood shall pay any and all recording fees charged on all documents required to be recorded in connection with the conveyance of the Property to Citadel Wellwood. Seller shall be responsible for New Jersey Realty Transfer Fees, if any, or to execute the appropriate Affidavit of Consideration or Exemption. Any fees and costs incurred as a result of any title searches, title insurance and/or financing of the Purchase Price or subsequent mortgage of the Property by Citadel Wellwood shall be paid by Citadel Wellwood. Any fee charged by a title insurance company for conducting closing shall be divided equally between Citadel Wellwood and Borough.

## **ARTICLE XI - DEFAULTS AND REMEDIES**

**11.1 Borough's Default: Citadel Wellwood's Sole Remedies.** If, after written demand, Borough fails to consummate this Agreement in accordance with its terms (other than by reason of (i) Citadel Wellwood's breach of any of its representations and warranties contained in this Agreement; (ii) Citadel Wellwood's continuing default of any of its covenants hereunder after ten (10) days prior written notice of such default; (iii) a failure of any condition to Borough's obligation to sell the Property to be satisfied; (iv) a termination of this Agreement by Borough or Citadel Wellwood pursuant to a right to do so expressly provided for in this Agreement, except by reason of a default by either party; or (v) failure by Citadel Wellwood to deliver the items required under Section 9.2(b)), Citadel Wellwood may, as Citadel Wellwood's sole and exclusive remedy, terminate this Agreement by written notice to Borough, and Citadel Wellwood may recover from Borough, Citadel Wellwood's actual and direct damages (out-of-pocket amounts actually paid by Citadel Wellwood to third parties, but specifically excluding any internal or overhead costs or expenses of Citadel Wellwood). UNDER NO CIRCUMSTANCES MAY CITADEL WELLWOOD SEEK OR BE ENTITLED TO RECOVER ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES, ALL OF WHICH CITADEL WELLWOOD SPECIFICALLY WAIVES, FROM BOROUGH FOR ANY BREACH BY BOROUGH OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR OF ANY REPRESENTATION, WARRANTY OR COVENANT OF BOROUGH HEREUNDER, NOR SHALL CITADEL WELLWOOD BE ENTITLED TO SEEK OR ENFORCE SPECIFIC PERFORMANCE OF THIS AGREEMENT BY BOROUGH. CITADEL WELLWOOD SPECIFICALLY WAIVES THE RIGHT TO FILE ANY LIS PENDENS OR OTHER LIEN AGAINST THE PROPERTY. In the event of Borough's default after Closing in any of its covenants in this Agreement which survive Closing or under any documents delivered at Closing, and such default continues for more than thirty (30) days after written notice of such default from Citadel Wellwood, Citadel Wellwood shall be entitled to pursue its actual and direct damages as limited above as Citadel Wellwood's sole and exclusive remedy for such default.

**11.2 Citadel Wellwood's Default: Borough's Remedies.** If, after written demand, Citadel Wellwood fails to consummate this Agreement in accordance with its terms (other than by

reason of (i) Borough's breach of any of its representations or warranties contained in this Agreement; (ii) Borough's continuing default of any of its covenants after ten (10) days prior written notice of such default; (iii) a failure of any condition to Citadel Wellwood's obligation to purchase the Property to be satisfied; (iv) a termination of this Agreement by Borough or Citadel Wellwood pursuant to a right to do so expressly provided for in this Agreement; or (v) failure by Borough to deliver the items required under Section 9.2(a)), Borough may terminate this Agreement and receive damages as determined by a court of competent jurisdiction for breach of this Agreement. In addition, Citadel Wellwood shall immediately deliver to Borough all information, data, studies and tests regarding the Property in its possession or control, including, without limitation, studies, tests and other results of the studies and tests, the Survey obtained by Citadel Wellwood, if any, any title commitment, and all copies or reproductions of any of the foregoing. Notwithstanding anything to the contrary contained or implied elsewhere herein, in the event of Citadel Wellwood's continuing default after Closing in any of its covenants in this Agreement which survive Closing or any documents delivered by Citadel Wellwood at Closing, and such default continues for more than thirty (30) days after written notice of such default from Borough, or immediately if Citadel Wellwood files a lis pendens or an action for specific performance against Borough or otherwise clouds Borough's title to the Property or any portion thereof, Borough shall be entitled to pursue any remedies available at law or in equity including, but not limited to, suit for damages from Citadel Wellwood (including, but not limited to, attorneys' fees and costs incurred by Borough in connection therewith).

## **ARTICLE XII - Warranties And Representations.**

12.1 The Redeveloper's Representations, Warranties and Covenant. The Redeveloper hereby represents and warrants to, and covenants with the Borough that:

1) Organization. The Redeveloper has all requisite power and authority to enter into this Agreement.

2) Authorization; No Violation. The execution, delivery and performance by the Redeveloper of this Agreement have been duly authorized by all necessary action and will not violate the certificate of formation, operating agreement or any other formation or operating document of the Redeveloper or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which the Redeveloper is a party or by which the Redeveloper or its material assets may be bound or affected.

3) Valid and Binding Obligations. The person executing this Agreement on behalf of the Redeveloper has been duly authorized and empowered and this Agreement has been duly executed and delivered by the Redeveloper and constitutes the valid and binding obligation of the Redeveloper.

4) Litigation. No suit is pending against or affects the Redeveloper which could have a material adverse effect upon the Redeveloper's performance under this Agreement or the financial condition or business of the Redeveloper. There are no outstanding judgments against the Redeveloper that would have a material adverse affect upon the assets or properties of the Redeveloper or which would materially impair or limit the ability of the Redeveloper to enter into or carry out the transactions contemplated by this Agreement.

5) No Conflicts. This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the Redeveloper is a party or is otherwise subject.

6) No Violations of Laws. The Redeveloper has received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the Redeveloper with applicable statutes, rules and regulations of the United States of America, the State of New Jersey or of any other state or municipality or agency. The Redeveloper is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority that is in any respect material to the transactions contemplated hereby.

12.2 The Borough's Representations, Warranties and Covenants. The Borough hereby represents and warrants to, and covenants with, the Redeveloper that:

1) Organization. The Borough is a public body politic of the State of New Jersey. The Borough has all requisite power and authority to enter into this Agreement.

2) Authorization; No Violation. The execution, delivery and performance by the Borough of this Agreement are within the authority of the Borough and will not violate the statutes, rules and regulations establishing the Borough and governing its activities, have been duly authorized by all necessary government action and will not result in the breach of any material agreement to which the Borough is a party or to the best of its knowledge and belief, any other material agreement by which the Borough or its material assets may be bound or affected.

3) Valid and Binding Obligations. The person executing this Agreement on behalf of the Borough has been duly authorized and empowered and this Agreement has been duly executed and delivered by the Borough and constitutes the valid and binding obligation of the Borough except to the extent that the enforcement thereof maybe limited by the Creditors' Rights Limitations.

4) Litigation. No suit is pending or affects the Borough that could have a material adverse effect upon the Borough's performance under this Agreement or the financial condition or business of the Borough. There are no outstanding judgments against the Borough that would have a material adverse affect upon the assets or properties of the Borough or which would materially impair or limit of the ability of the Borough to enter into or carry out the transactions contemplated by this Agreement.

5) No Conflicts. This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the Borough is a party or is otherwise subject.

6) No Violation of Laws. The Borough has received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the Borough with applicable statutes, rules and regulations of the United States of America, the State of New Jersey or any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement; and the Borough is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby.

## **ARTICLE XIII - MISCELLANEOUS PROVISIONS**

**13.1 Assignment.** Citadel Wellwood may not assign Citadel Wellwood' rights under this Agreement without Borough's prior written consent, which consent may be withheld in Borough's reasonable discretion.

### **13.2 Casualty: Risk of Loss.**

(a) **Casualty.** In the event that all or any "substantial portion" of the Property shall be damaged or destroyed by fire or other casualty after the date of the Agreement and before the Closing Date, Citadel Wellwood may, at its option, terminate this Agreement by written notice thereof to the other party within ten (10) days after Borough notifies Citadel Wellwood of the casualty and the availability and amount of insurance proceeds, in which event Citadel Wellwood shall receive a refund of the moneys paid to the Borough under Section 4.3 (d) of this Agreement. In the event neither Borough nor Citadel Wellwood terminate this Agreement as described above, they shall be deemed to have elected to proceed to close the transaction contemplated herein pursuant to the terms hereof, in which event Borough shall deliver to Citadel Wellwood at the Closing any insurance proceeds actually received by Borough attributable to the Property from such casualty, or assign to Citadel Wellwood all of Borough's right, title and interest in any claim under any applicable insurance policies in respect of such casualty, together with an amount equal to the deductible(s), if any, applicable to such loss under the insurance policy(ies), and there shall be no reduction in the Purchase Price. If the casualty loss does not involve a "substantial portion" of the Property, as defined herein, then Citadel Wellwood shall be obligated to close the transaction contemplated herein according to the terms hereof, notwithstanding such casualty loss, and Borough shall, at Borough's election, either (i) repair the damages caused by such casualty loss prior to Closing, at Borough's expense, in a lien free, workman-like manner, with all required permits and approvals, or (ii) deliver to Citadel Wellwood at the Closing any insurance proceeds actually received by Borough attributable to the Property from such casualty, or (iii) assign to Citadel Wellwood all of Borough's right, title and interest in any claim under any applicable insurance policies in respect of such casualty, together with an amount equal to the deductible(s), if any, applicable to such loss under the insurance policy(ies), and there shall be no reduction in the Purchase Price.

(b) **Substantial Portion Defined.** For the purposes of this Section 12.2, a taking of or casualty loss to a "substantial portion" of the Property shall be deemed to include any taking or casualty loss which is equal to or greater than (a) 20% of the value of the Property as established by the Purchase Price, or (b) 20% of the aggregate gross number of square feet contained in the buildings that are situated on the Land, or (c) 10% of the total number of presently approved parking spaces on the Property, or any taking of a portion of the Property which has a material adverse effect on Citadel Wellwood' use of the remainder of the Property and shall not include any taking or casualty loss of less than such amount.

(c) **Risk of Loss.** Subject to the foregoing provisions of this Section 12.2, risk of loss until Closing shall otherwise be borne by Borough.

(d) **Emergency Repairs.** In the event the Property is damaged prior to Closing and such damage creates any emergency requiring immediate repair in order to prevent further damage to the Property, Borough shall be entitled to immediately commence such repairs, and the contractor and method of repair to be used shall be determined by Borough. Casualty proceeds, if any, paid as a result of damage requiring immediate repair shall be used in paying the cost of such repairs.

**13.3 Notices.** Any notice, approval, waiver, objection or other communication (for convenience, referred herein as a “notice”) required or permitted to be given hereunder or given in regard to this Agreement by one party to the other shall be in writing and the same shall be given and be deemed to have been delivered, served and given (a) if delivered in person, via a nationally-recognized overnight courier, or by facsimile when received by the person to whom notice is given, or (b) if mailed (except where actual receipt is specified in this Agreement) three (3) days after deposit in the United States mail, postage prepaid, addressed to the party at the address specified in Article I above. Any party may change its address for notices by notice theretofore given in accordance with this Section 12.3 and shall be deemed effective only when actually received by the other party.

**13.4 Entire Agreement.** This Agreement and the Exhibits attached hereto constitute the entire agreement between Borough and Citadel Wellwood, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, either oral or written, between them concerning the Property other than the Financial Agreement and the Redeveloper Agreement which shall be executed at or before Closing. No subsequent alteration, amendment, change, deletion or addition to this Agreement shall be binding upon Borough or Citadel Wellwood unless in writing and signed by both Borough and Citadel Wellwood.

**13.5 Headings.** The headings, captions, numbering system, etc. are inserted only as a matter of convenience and are not to be considered in interpreting the provisions of this Agreement.

**13.6 Binding Effect.** All of the provisions of this Agreement are hereby made binding upon the personal representatives, heirs, successors, and assigns of both parties hereto. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa. The terms “heir, executors, administrators and assigns” shall include “successors, legal representatives and assigns.”

**13.7 Absence of Broker.** The parties represent to each other that no broker or other finder was utilized in connection with the execution of this Agreement. In the event that the representation contained in this Section 12.7 is untrue, each party agrees to indemnify the other for any loss incurred.

**13.8 Unenforceable or Inapplicable Provisions.** If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein, unless such unenforceable provision materially affects any material covenants set forth herein.

**13.9 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical.

**13.10 Applicable Law.** This Agreement shall be construed under and in accordance with the internal laws of the State of New Jersey without regard to principles of conflicts of laws.

**13.11 Attorneys’ Fees.** In the event any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover and the court is specifically empowered to award reasonable attorneys’ fees,



court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.

**13.12 Authority.** Each person executing this Agreement, by his execution hereof, represents and warrants that he is fully authorized to do so, however, the parties will cooperate in providing appropriate proof to the other party of the authority of the signing person to bind the party.

**13.13 Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed at the Closing, Borough and Citadel Wellwood agree to perform such other acts, and to execute and deliver such other instruments and documents as either Borough or Citadel Wellwood, or their respective counsel, may reasonably require in order to effect the intents and purposes of this Agreement.

**13.14 Time Periods.** Unless otherwise expressly provided herein, all periods for delivery or review and the like shall be determined on a "calendar" day basis. If any date for performance, approval, delivery or Closing falls on a Saturday, Sunday or legal holiday (state or federal) in the State of New Jersey, the time therefore shall be extended to the next business day.

**13.15 No Recording.** Borough and Citadel Wellwood agree that neither this Agreement, a copy of this Agreement nor any instrument describing or referring to this Agreement shall ever be filed of record in the public records of the County, and in the event this Agreement, a copy of this or any instrument describing or referring to this Agreement is so filed of record by Citadel Wellwood or its agents, such act will be considered a default under this Agreement and Borough, at Borough's option, may terminate this Agreement and exercise any other rights or remedies of Borough under this Agreement for a default on the part of Citadel Wellwood. However, Citadel Wellwood shall be entitled, if it so chooses, to file Notices of Settlement. In addition, Citadel Wellwood hereby appoints Borough as Citadel Wellwood' agent and attorney-in-fact with full power and authority to execute and record any and all documents deemed necessary by Borough to release, explain or terminate any such document wrongfully filed of record in the public records of the County. Such appointment is coupled with an interest and is irrevocable. This provision shall survive any termination of this Agreement.

**13.16 Interpretation.** The parties acknowledge that each party and its counsel have participated in the drafting of this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or in any amendments or exhibits thereto.

**13.17 No Third Party Beneficiary.** The provisions of this Agreement are for the exclusive benefit of the Borough and Citadel Wellwood hereto and no other party shall have any right or claim against the Borough and Citadel Wellwood, or either of them, by reason of those provisions or be entitled to enforce any of those provisions against the Borough and Citadel Wellwood hereto, or either of them.

**13.18 Provisions to Survive Closing.** Any and all of the provisions of this Agreement that requires or provide for the performance or liability of either party hereto following the Closing shall survive the Closing and the delivery of the Deed to Citadel Wellwood.

**13.19 Confidential Agreement.** Except as required by court order or by operation of law, the terms and conditions of this Agreement shall be treated as confidential by both parties, and neither any of such terms or conditions nor any copy of this Agreement shall be divulged or provided to any third party other than the parties' respective attorneys and Citadel Wellwood' lenders, if any, by either party hereto without the prior consent of the other party hereto. Citadel Wellwood shall cause Citadel Wellwood' lender to retain the confidentiality required pursuant to this Section.

**13.20 Escrow Funds .** The parties acknowledge and agree that in the event of any dispute concerning the Escrow Funds, if any,, the Borough shall have the right to interplead with the Superior Court of New Jersey in the County of Camden.

**13.21 No Attorney Review Period.** This Agreement was drafted by attorneys-at-law. It creates a binding contract when executed, without regard to any period for attorney review and/or cancellation thereafter.

DATED as of the date specified on page one of this Agreement.

**Borough:**

Attest:

**THE BOROUGH OF MERCHANTVILLE**

\_\_\_\_\_  
Denise Brouse, Borough Clerk

By:\_\_\_\_\_  
Frank M. North, Mayor

Date: \_\_\_\_\_

**Citadel Wellwood, LLC**

Date: \_\_\_\_\_

By:\_\_\_\_\_  
Richard DePetro, Managing Member